

**STATE OF KANSAS**  
**BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**

**In the Matter of the Violations of  
K.S.A. 65-3430, *et seq.* by**

**Clean Harbors Kansas, LLC  
2549 North New York Street  
Wichita, Kansas 67219  
EPA ID No. KSD 007 246 846  
Respondent**

**KDHE Case No. 13-E-09 BWM**

Pursuant to K.S.A. Chapters 65 and 77

**ORDER TO ELIMINATE THREATENED POLLUTION and/or HAZARD AND  
ASSESSING AN ADMINISTRATIVE PENALTY**

Now on this 15<sup>th</sup> day of April, 2013, the Kansas Department of Health and Environment ("KDHE"), through its Secretary and Agency Head, Robert Moser, MD ("Secretary"), hereby orders Clean Harbors Kansas, LLC to pay an administrative penalty for violations of laws governing hazardous waste in Kansas (K.S.A. 65-3430, *et seq.*) and regulations promulgated thereunder, and orders the remediation of all conditions threatening pollution and/or hazards to the environment or to public health and safety at the treatment and storage facility owned and/or operated by Clean Harbors Kansas, LLC ("Respondent"), based on the Findings of Fact and Conclusions of Law set forth in this Order.

**Findings of Fact**

1. Respondent is the owner and/or operator of a hazardous waste treatment and storage facility located at 2549 North New York Avenue, Wichita, Sedgwick County, Kansas ("Facility"). The Facility has been issued EPA identification number KSD 007 246 846. On September 28, 2012, KDHE renewed Respondent's permit to operate the Facility ("Permit"). Part A and Part B of Respondent's Permit Application are incorporated into



Permit Condition I.A. of the Permit.

2. Section D-2a of the Part B Permit Application, revision number 15, dated February 10, 2012, requires that Respondent control building precipitation ingress and cover buildings to minimize ingress of precipitation. KDHE cited violations of this Permit requirement at inspections in September 2003, February 2009, and December 2011.

3. Section D-2a of the Part B Permit Application, revision number 15, dated February 10, 2012, requires that the concrete pads and diking/walls that make up the secondary containment at the Facility be maintained to prevent cracks and gaps. KDHE cited violations of this Permit requirement at inspections in March 2008 and February 2011.

4. Section D-3e of the Part B Permit Application, revision number 15, dated February 10, 2012, states that liquids discovered in the secondary containment system at the Facility will be removed within 24 hours of detection, or as soon as practical.

5. Based on the information obtained in the October 2012 inspection, the Facility is a Large Quantity Generator as defined by K.A.R. 28-31-260a(a)(9).

6. KDHE previously inspected the Facility in September 2003, August 2005, June 2006, February 2007, March 2008, February 2009, January 2010, February 2011, and December 2011.

7. On June 19, 2012, Respondent and KDHE entered into a Consent Agreement and Final Order (Order). Under the terms of the Order, Respondent agreed to "implement all necessary measures" to comply with Section D-2a, of its Permit Application, "including maintaining the roofs of all buildings at the Facility to prevent ingress of precipitation."

8. On October 17 and 18, 2012, a United States Environmental Protection Agency ("EPA") inspector conducted a routine hazardous waste compliance inspection

("Inspection") at the Facility, and observed, noted, and/or photographed the following violations of applicable statutes and regulations:

- a. Respondent failed to comply with an order of the Secretary as required by K.S.A. 65-3441(a)(2) and failed to comply with a condition of the Permit as required by K.S.A. 65-3441(a)(3). Respondent had not maintained the Building to control and minimize ingress of precipitation in violation of Section D-2a of the Permit Application. Part of the Building I roof was collapsing inward and precipitation (i.e., water) had accumulated in two containment systems. EPA staff documented that the water appeared to come from the roof and underneath one north facility door. KDHE cited violations of the same Permit requirement at inspections in September 2003, February 2009, and December 2011.
- b. Respondent failed to comply with conditions of the Permit as required by K.S.A. 65-3441(a)(3), to wit:
  - i. Hairline cracks and gaps were in the containment system located at the southeast area of Building C. In addition, the caulking material in the containment system appeared to be releasing from the concrete. Also, the coating was cracked, peeling, and missing in some areas of the containment system in the Drum Dock in violation of Section D-2a of the Permit Application. KDHE cited violations of this Permit requirement at inspections in March 2008 and February 2011.

- ii. Liquids in the secondary containment system in Building I had not been removed within 24 hours of detection, or as soon as practical in violation of Section D-3e of the Permit Application. The water in the containment system reached a depth of approximately 2 to 3 inches. According to the National Weather Service Forecast Office, the City of Wichita received 0.32 inches of precipitation from October 1, 2012 through October 17, 2012. Additionally, Respondent's work ticket, number 75312, dated May 17, 2012, documented water in the building.
- c. Respondent failed to submit to KDHE updated site contact information within 60 days of a change in violation of K.A.R. 28-31-4(c). On the EPA Handler Information Report, dated September 26, 2012, and EPA RCRA Subtitle C Site Identification Form, signed by Respondent on February 10, 2012, the site (Facility) contact is listed as Brian Key. Mr. Key left Respondent's employment in May 2012, at least 139 days before the Inspection.
- d. Respondent failed to determine if waste is hazardous waste as required by 40 CFR § 262.11. In Building D, Respondent had not conducted waste determinations on an unknown, black liquid spilled on the inside of a flammable cabinet and four, cardboard containers of fluorescent lamps at the maintenance garage. KDHE cited this violation at the inspection in January 2010.
- e. Respondent failed to mark the accumulation start date on two

hazardous waste storage containers in violation of 40 CFR § 262.34(a)(2). In Building C, two, 55-gallon hazardous waste storage containers of personal protective equipment (“PPE”) were not marked with the accumulation start date.

- f. Respondent failed to immediately amend the contingency plan as required by 40 CFR § 264.54. The primary emergency coordinator listed in Respondent’s contingency plan, Brian Key, left Respondent’s employment in May 2012. KDHE cited this violation at the inspection in September 2003.

9. On October 18, 2012, EPA issued Respondent a Notice of Violation (“NOV”) for violations of Kansas Hazardous Waste statutes and regulations. To date, Respondent has not corrected the violations identified in paragraphs 8.a. and 8.b.i.

10. Respondent’s violations threaten or cause pollution and/or pose a hazard to public health and safety or the environment in that failure to maintain the buildings may damage storage containers and/or dikes or berms. Such damage may result in releases of hazardous and/or solid waste that may contaminate air, soil, and water resources and may adversely impact human health and safety. Failure to remove precipitation from containment systems may result in an overflow of potentially contaminated precipitation into the environment.

11. Based on the foregoing facts, the Secretary concludes that Respondent has violated Kansas Hazardous Waste laws and regulations, some or all of which violations threaten to cause environmental pollution and/or are a hazard to property or to public health and safety, and is therefore subject to administrative penalties and actions.

### Conclusions of Law

12. KDHE has general jurisdiction over matters involving the safe and legal management and disposal of hazardous waste pursuant to K.S.A. 65-3430, *et seq.*, and regulations promulgated thereunder at K.A.R. 28-31-4 through 28-31-279(a). KDHE also has general authority and responsibility to protect the waters and soils of the state under authority of K.S.A. 65-161, *et seq.*

13. KDHE's Secretary and the Director of KDHE's Division of Environment have the authority to assess a penalty in an amount not to exceed \$10,000 for violations of laws prohibiting certain hazardous waste practices, which penalty shall constitute an actual and substantial economic deterrent for each day a violation of K.S.A. 65-3441 continues. K.S.A. 65-3446. In accordance with its standard practices and procedures, KDHE calculated an administrative penalty based on the foregoing violations, which penalty constitutes an economic deterrent for such violations.

14. If the Secretary finds that the generation, accumulation, management or disposal of a hazardous waste by any person is causing or threatens to cause pollution of the land, air or waters of the state or is or threatens to become a hazard to persons, property or public health or safety, or that the provisions of this act or any rule and regulation adopted pursuant thereto have been otherwise violated, the Secretary may order the person to modify the generation, accumulation, management or disposal of the hazardous waste management procedures as will prevent or remove the pollution or hazard or take any other action deemed necessary. K.S.A. 65-3443(a).

15. The Secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of K.S.A. 65-

3430, *et seq.* or rules and regulations adopted pursuant thereto, may take such action as the Secretary determines to be necessary to protect the health of persons or the environment. The action the Secretary may take shall include, but not be limited to: issuing an order directing the owner, generator, transporter or the operator of the hazardous waste facility or site, or the custodian of the waste, which constitutes the hazard, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard. The action may include, with respect to a facility or site, permanent or temporary cessation of operation. K.S.A. 65-3445(a)(1).

16. “Hazardous waste” means any waste or combination of wastes which because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary: (A) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (B) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. K.S.A. 65-3430(e)(1). The wastes described above in paragraphs 8.d. and 8.e. meet the definition of hazardous waste.

17. “Hazardous waste facility” means a facility or part of a facility: (1) At which hazardous waste is treated; (2) at which hazardous waste is stored; or (3) at which hazardous waste is disposed and will remain after closure. “Hazardous waste facility” includes a hazardous waste injection well. K.S.A. 65-3430(f). The Facility meets the definition of a Hazardous Waste Facility.

18. “Generator” means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation. K.S.A. 65-3430(d).

19. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body. K.S.A. 65-3430(o).

20. K.S.A. 65-3441(a) deems it unlawful to:

- a. Be in violation of the rules and regulations, standards or orders of the secretary. K.S.A. 65-3441(a)(2) and K.S.A. 65-3430(f).
- b. Violate any condition of any hazardous waste facility permit. K.S.A. 65-3441(a)(3).
- c. Store, collect, treat or dispose of hazardous waste contrary to the rules and regulations, standards or orders of the secretary. K.S.A. 65-3441(a)(4). K.A.R. 28-31-262 and K.A.R. 28-31-264 adopt by reference 40 CFR § 262.11, 262.34, and 264.54, and 264.175, respectively.

21. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent has committed violations of Kansas Hazardous Waste laws and regulations, some or all of which violations threaten to cause environmental pollution and/or hazards to the public health or environment, as follows:

- a. Respondent failed to comply with an order of the Secretary and failed to comply with a condition of the Permit in violation of K.S.A. 65-3441(a)(2) and (a)(3), respectively [Fourth Offense]. **PENALTY: \$ 10,000.**
- b. Respondent failed to comply with conditions of the Permit in violation of K.S.A. 65-3441(a)(3) [Third Offense]. **PENALTY: \$ 7,000.**
- c. Respondent has violated the following Hazardous Waste rules and



regulations of the Secretary in violation of K.S.A. 65-3441(a)(2) and/or (a)(4), to wit:

- i. Respondent failed to update notification of hazardous waste activity in violation of K.A.R. 28-31-4(c). **Penalty: \$2,000.**
- ii. Respondent failed to determine if waste is hazardous waste in violation of 40 CFR § 262.11 [Second Offense]. **Penalty: \$3,800.**
- iii. Respondent failed to mark the accumulation start date on each hazardous waste storage container in violation of 40 CFR § 262.34(a)(2). **Penalty: \$1,400.**
- iv. Respondent failed to amend the contingency plan in violation of 40 CFR § 264.54 [Second Offense]. **Penalty: \$2,000.**

**IT IS THEREFORE ORDERED** that Respondent pay the above penalty for each of its violations of Kansas Hazardous Waste laws and regulations, for a total penalty amount of **\$26,200**, which amount shall be remitted to KDHE within 30 days of the date of service of this Order. The penalty payment shall be made payable to the Kansas Department of Health and Environment and submitted to:

Kansas Department of Health and Environment  
Office of Legal Services  
1000 SW Jackson, Suite 560  
Topeka, Kansas 66612-1371

**IT IS FURTHER ORDERED** that Respondent take the following actions:

- a. Ensure that all waste storage buildings are maintained, as required by the Permit, to control precipitation ingress. This includes, but is not limited to, ensuring that the roofs of all storage buildings do not leak and that

- gaps in external doors are minimized to prevent precipitation ingress.
- b. Ensure that all secondary containment areas are maintained, as required by the Permit, to prevent cracks and gaps. If any cracks and/or gaps develop, Respondent shall make the necessary repairs immediately.
  - c. A Kansas-licensed, Professional Engineer must certify in writing that the conditions in paragraphs a. and b., above, have been met. This certification must be provided within 90 days of service of this Order.

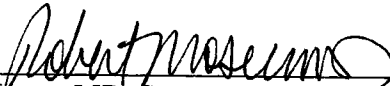
**IT IS FURTHER ORDERED** that if Respondent fails to either:

- a. Conduct the foregoing actions, or
- b. Continues or repeats the unlawful activity,

Such noncompliance shall be considered a violation of this Order and the Secretary will order such other additional actions and penalties as are authorized and appropriate. This Order shall continue in effect notwithstanding Respondent's noncompliance.

**IT IS SO ORDERED.**

Dated this 15<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Robert Moser, MD, Secretary  
Kansas Department of Health and Environment

### **NOTICE OF RIGHTS**

You have the right to request a hearing on the foregoing **ADMINISTRATIVE ORDER**. Any request for a hearing must be made in writing and must be submitted within 15 days from the date of service of this Order, as designated in the Certificate of Service, below. All written requests must be directed to:

Robert Tomlinson  
Director  
Office of Administrative Hearings  
1020 S Kansas Ave  
Topeka, Kansas 66612

with a copy to Nancy L. Ulrich, KDHE Office of Legal Services, 1000 SW Jackson, Suite 560, Topeka, Kansas 66612-1371.

If you fail to make a timely written request for a hearing, this ADMINISTRATIVE ORDER becomes effective and final upon expiration of the time for requesting a hearing.

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 17<sup>th</sup> day of April, 2013, a true and correct copy of the foregoing ADMINISTRATIVE ORDER was served by depositing same in the United States Postal Service mail, postage paid, and mailing same certified mail, return receipt requested, postage paid, and addressed to:

Clean Harbors Kansas, LLC  
Attn: Kent Frame  
2549 North New York Avenue  
Wichita, KS 67219  
*Respondent*

7011 0110 0001 9680 9419

Certified Mail No.

*Susan J. Vogel*  
KDHE Staff Member